

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LIFE INSURANCE COMPANY OF)
NORTH AMERICA,)
Plaintiff,)
v.) Case No. 08 CV 00963
DEBRA A. BROWNING and THERESA)
A. SCIMECA (Individually and as Guardian of)
her minor child, CODY BROWNING,)
Defendants.)

AMENDED COMPLAINT FOR INTERPLEADER AND OTHER RELIEF

NOW COMES plaintiff, LIFE INSURANCE COMPANY OF NORTH AMERICA, by its attorneys, Daniel K. Ryan and Adam L. Saper, and as its Amended Complaint for Interpleader and Other Relief, states as follows:

Introduction

Life Insurance Company of North American (“LINA”) brings this Rule Interpleader Action pursuant to Fed. R. Civ. P 22 to obtain adjudication as to the competing claims to funds which LINA is holding pursuant to a group life insurance policy it issued to Jack Browning’s employer, McMaster Carr Supply (“McMaster”), in conjunction with an employee benefits plan sponsored by McMaster. The adverse claimants are Jack Browning’s first wife (Theresa A. Scimeca), second wife (Debra A. Browning), and minority-aged son from his first marriage (Cody Browning). There is a dispute among the claimants as to the rightful distribution of the employee benefits, and therefore the proceeds under the group policy. LINA requests that it be allowed to deposit with the Court the death benefit in the undisputed amount of \$77,100, and allow the claimants to litigate the issue of the rightful recipient of the funds.

Parties

1. LINA is a Pennsylvania corporation with its principal place of business located in Philadelphia.

2. Theresa A. Scimeca ("Theresa") resides in Antioch, Illinois in the County of Lake. Theresa was the first wife of Jack Browning ("Jack"). Cody Browning ("Cody") was born on August 15, 1993 to Theresa and Jack Browning. Cody is presently fourteen years old.

3. Debra A. Browning ("Debra") resides in Plainfield, Illinois in the County of Will. Debra is the second wife of Jack Browning and was married to him at the time of his death.

Jurisdiction and Venue

4. LINA invokes this Court's jurisdiction pursuant to Fed. R. Civ. P 22, through 28 U.S.C. 1331 and 29 USC 1132(a)(3), in that the life insurance benefit at issue was part of an employee benefit plan within the meaning of the Employment Retirement Income Security Act of 1974 as amended (29 USC Sec. 1001 *et. seq.*) ("ERISA").

5. Venue is proper in this District both because all defendants reside in this District and a substantial part of the events giving rise to this action occurred in this District.

Interpleader Facts

6. LINA issued a group life insurance policy to McMaster, Policy Number FLX 960387 (the "Policy") in connection with an employee welfare benefit plan sponsored by McMaster (the "Plan"). A true and correct copy of the Policy is attached hereto as Exhibit A.

7. Jack Browning was employed by McMaster and was a plan participant in the Plan.

8. Jack Browning died on or about November 16, 2007.

9. As a result of the aforesaid death, a death benefit in the amount of \$77,100 (the "Proceeds") became payable under the Plan and therefore under the terms of the Policy.

10. Jack Browning and Theresa were divorced on or about October 7, 1998.

11. Theresa contends that, pursuant to the Judgment for Dissolution of Marriage and the Marital Settlement Agreement between them ("Marital Settlement Agreement"), Jack Browning was required to maintain a life insurance policy with Theresa as the beneficiary until Cody became emancipated. True and correct copies of the Judgment for Dissolution of Marriage and the Marital Settlement Agreement are attached hereto as Exhibit B.

12. Section 10.1(B) of the Marital Settlement Agreement provides that one of the circumstances constituting an "emancipation event" is when Cody has a "permanent residence away from the permanent residence of the custodial spouse."

13. In a beneficiary designation Form dated on or about June 28, 2003 (the "BDF"), Jack designated Debra to receive 25% of the Proceeds and Cody to receive 75% of the Proceeds. A true and correct copy of this Beneficiary Designation Form is attached hereto as Exhibit C.

14. Debra has made a claim to 25% of the Proceeds, contending that Section 10.1(B) of the Marital Settlement Agreement did not restrict Jack from changing his beneficiary because Cody had become emancipated when he went to live with Jack and Debra on a full-time basis.

15. Theresa has made a claim to 100% of the Proceeds, contending that the Marital Settlement Agreement controls and that she is entitled to the Proceeds.

16. In light of the competing claims of the defendants, LINA is at risk of being subjected to multiple liability under the Policy if it pays the proceeds either pursuant to the MDF or pursuant to the Marital Settlement Agreement.

WHEREFORE, plaintiff, LIFE INSURANCE COMPANY OF NORTH AMERICA, requests the following relief:

- a. That plaintiff be permitted to deposit with the Clerk of this Court the amount of plaintiff's admitted liability of \$77,100, and that the Clerk be ordered to promptly and properly invest said funds so that interest may accrue for the benefits of Defendants;

- b. That each defendant be enjoined, pursuant to 28 U.S.C. § 2361, from instituting or prosecuting any action against plaintiff, in any court, Federal or State, for the recovery of the life insurance proceeds under the Policy or any part thereof;
- c. That this Court order that plaintiff be released and discharged from any further liability upon the aforesaid group life insurance policy relative to the death of Jack Browning;
- d. That plaintiff be dismissed from this action and that Defendants be required to litigate in this action their respective entitlement to the Proceeds;
- e. That plaintiff recover its attorneys' fees, expenses and costs incurred in bringing this action; and
- f. Such other and further relief as the Court deems appropriate.

LIFE INSURANCE COMPANY OF NORTH
AMERICA

By: /s/ *Daniel K. Ryan*
One of Its attorneys

Daniel K. Ryan
Adam L. Saper
HINSHAW & CULBERTSON
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601
(312) 704-3000
Fax: (312) 704-3001
dryan@hinshawlaw.com
asaper@hinshawlaw.com

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on March 3, 2008, I served this **AMENDED COMPLAINT FOR INTERPLEADER AND OTHER RELIEF** by filing it with the Court's CM/ECF system, which will make copies of the document available to all counsel of record on March 3, 2008:

By: /s/Daniel K. Ryan

Service List

Mr. Bradley H. Foreman
Law Offices of Bradley H. Foreman, P.C.
6914 W. North Avenue
Chicago, Illinois 60707
brad@bradleyforeman.com

Mitchell Scot Feinberg
Chuhak & Tecson, P.C.
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606-7413
mfeinberg@chuhak.com

Sanjay Shivpuri
Chuhak & Tecson, P.C.
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606-7413
sshivpuri@chuhak.com